

**REMARKS**

Claims 124-149 are pending. Claims 137-149 are withdrawn from consideration, by the Examiner. Upon entry of the foregoing amendments, claims 124-136 are under examination. Claims 124 and 132 are amended. Amendments are supported by the original specification and no new matter has been added to the claims.

Applicants respectfully request withdrawal of the rejections, in light of the foregoing amendments and the following remarks.

***Response to Arguments:***

Applicants appreciate Examiner's withdrawal of the rejections based upon McKellop and Saum.

The Examiner has maintained the alleged anticipation rejections based upon Lemstra (USPN 5,066,755). In response, applicants provide additional arguments pointing out how Lemstra teaches away from the instant invention and that Lemstra does not teach the instant invention. Applicants also amend independent claims 124 and 132, reciting that "the polyethylene has a tensile elastic modulus of less than about 1 Gpa", for additional clarity and to expedite the prosecution. The amended claims are supported by the specification (see for example, page 26, lines 21-25), therefore, no new matter is added. Withdrawal of rejections is solicited.

***Claim Rejections:*****Anticipation Rejections**

On pages 3-4 of the Office Action, the Examiner has rejected the claims 124-129, and 131-136 as allegedly being anticipated by Lemstra (USPN 55,066,755). Applicants respectfully disagree with the Examiner and note that in order to reject a claim under 35 USC § 102, the examiner must demonstrate that each and every claim term is contained in a single prior art reference that has an earlier date than the

application. See *Scripps Clinic & Research Foundation v. Genentech, Inc.*, 18 USPQ2d 1001, 1010 (Fed. Cir. 1991); *Hybritech, Inc. v. Monoclonal Antibodies, Inc.*, 231 USPQ 81, 90 (Fed. Cir. 1986); see also MPEP § 2131. Claim terms are to be given their plain meaning as understood by the person of ordinary skill in the art, particularly given the limitations of the English language. See MPEP §§ 707.07(g); 2111.01. Claims are to be given their broadest reasonable interpretation consistent with Applicants' specification. See *In re Zletz*, 13 USPQ2d 1320, 1322 (Fed Cir. 1989) (holding that claims must be interpreted as broadly as their terms reasonably allow); MPEP § 2111.

Not only must the claim terms, as reasonably interpreted, be present, an allegedly anticipatory reference must enable the person of ordinary skill to practice the invention as claimed. Otherwise, the invention cannot be said to have been already within the public's possession, which is required for anticipation. See *Akzo, N.V. v. U.S.I.T.C.*, 1 USPQ2d 1241, 1245 (Fed. Cir. 1986); *In re Brown*, 141 USPQ 245, 249 (CCPA 1964).

Applicants provide following arguments to overcome the 35 USC § 102 rejections:

***Lemstra does not teach the invention***

Applicants state that the Examiner has misinterpreted Lemstra's Fig. 3 and the description at columns 4, 19, 20, and 21 and explain that:

Lemstra describes polyethylene filaments, tapes and films processed with irradiation for improved creep resistance. Lemstra attempted to achieve a high creep resistance polyethylene material that has a high degree of orientation. This high degree of orientation is made permanent by the irradiation process. Lemstra chooses to either orient the polyethylene in a gel state during irradiation or orient it after irradiation. Lemstra teaches away from bringing the polyethylene above its melting point after irradiation (see, for example, column 11, lines 17-25). This is to avoid any loss of orientation induced during stretching (either during or after irradiation), which produces high creep resistance. Therefore, Lemstra teaches away from the instant invention.

In Figure 3, Lemstra shows an irradiated polyethylene material first with a single melting peak, during the first heating scan, and with two melting peaks at the second heating scan. However, Lemstra teaches away from melting the polyethylene after irradiation to avoid loss of orientation in the polyethylene (see, for example, column 11, lines 17-25), therefore none of the embodiments claimed in the Lemstra patent would have a composition of a polyethylene irradiated with multiple melting peaks. The only reason why figure 3 shows two melting peaks of an irradiated polyethylene is because Lemstra carried out the typical DSC analysis of the irradiated polyethylene components that had been oriented for an accurate characterization. Therefore, Lemstra does not teach the instant invention. Moreover, Lemstra teaches away from melting the polyethylene after irradiation and orientation.

The Examiner has misunderstood the technical aspects of the invention and provided wrong interpretations of Lemstra disclosure, on page 3 of the office action, that: regarding claims 125 and 133, "Lemstra discloses irradiation of the same material and the same radiation dosage, and variation of dosages to produce desired properties (col.14, lines 12-16) inherently the same product with three melting peaks will be produced"; and regarding claims 127 and 135, "Lemstra discloses irradiation at the same doses [ ] (col.7, lines 61-63, therefore, inherently heating will occur." Applicants point out that Lemstra discloses irradiation dose levels varying from 1 to 10 Mrads, preferably from 3-7 Mrads (see, for example, column 7, lines 61-63). The Examiner has wrongfully interpreted that by going to higher dose levels "inherently heating will occur" and "three melting peaks will be produced." Applicants submit that this is not true because, heating is a function of radiation dose rate and not necessarily the dose by itself. If a gamma irradiator is used, which Lemstra has used according to its examples, increasing the dose level will not cause more heating of the polyethylene. Therefore, Lemstra process will not produce the instant invention.

On page 4 of the office action, regarding claims 131 and 136, the Examiner has misinterpreted that Lemstra disclosure at col.7, lines 61-63 is the same as the

disclosure of the instant invention and stated "irradiation affect properties such as crystallinities and tensile modulus (col.4, lines 1-8), therefore, the end product will inherently posses the same properties." Applicants indicate that Lemstra provides polyethylene material of highly oriented fibers with a modulus of at least 30 Gpa (see, for example, col.4, line 50). In contrast, the instant invention provides polyethylene with multiple melting peaks and a modulus of less than about 1 GPa (*i. e.*, less than about 1000 MPa) (see, for example, specification page 26, lines 21-25).

For further clarity, Applicants amend claims 124 and 132 by more clearly describing the invention that "the polyethylene has a tensile elastic modulus of less than about 1 Gpa". Applicants respectfully request the withdrawal of the rejections.

#### **Obviousness Rejections**

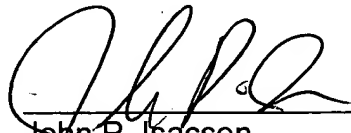
On page 4 of the Office Action, the Examiner has rejected claims 130 as allegedly being obvious over Lemstra in view of Salovey *et al.* (USPN 6,281,264). Applicants respectfully disagree with the Examiner. Applicants refer to the arguments made above in order to overcome the 35 USC § 102 rejections and state that Salovey *et al.* do not rectify deficiencies of Lemstra. Therefore, combination of Lemstra and Salovey *et al.* does not make the instant invention obvious. Withdrawal thereof is respectfully requested.

**CONCLUSION**

In view of this Amendment and Applicants' remarks above, Applicants respectfully submit that the application is in condition for allowance. If any additional fees or additional extensions of time are required with the filing of this Amendment, Applicants respectfully request such fees and extensions be charged to Deposit Account No. 08-1641.

Respectfully submitted,

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Date

  
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